

## Federal Acquisition Regulation

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forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

*Alternate I* (APR 1984). As prescribed in 27.201-2(a)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

*Alternate II* (APR 1984). As prescribed in 27.201-2(a)(3), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are *not* established by a government regulatory body, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the Contracting Officer directing the manner of performance.

[49 FR 12986, Mar. 30, 1984, as amended at 60 FR 34761, July 3, 1995; 72 FR 63065, Nov. 7, 2007]

### 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed in 27.201-2(b), insert the following clause:

#### NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

(End of clause)

[49 FR 12987, Mar. 30, 1984, as amended at 61 FR 39198, July 26, 1996; 72 FR 63065, Nov. 7, 2007]

### 52.227-3 Patent Indemnity.

As prescribed in 27.201-2(c)(1), insert the following clause:

#### PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as *construction work*) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of

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the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

*Alternate I* (APR 1984). As prescribed in 27.201-2(c)(2), add the following paragraph (c) to the basic clause:

(c) This patent indemnification shall not apply to the following items: \_\_\_\_\_  
[Contracting Officer list and/or identify the items to be excluded from this indemnity]

*Alternate II* (APR 1984). As prescribed in 27.201-2(c)(2), add the following paragraph (c) to the basic clause:

(c) This patent indemnification shall cover the following items: \_\_\_\_\_

List or identify the items to be included under this indemnity

*Alternate III* (JUL 1995). As prescribed in 27.201-2(c)(3), add the following paragraph to the basic clause:

( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.

[49 FR 12987, Mar. 30, 1984, as amended at 56 FR 15156, Apr. 15, 1991; 60 FR 34761, July 3, 1995; 72 FR 63065, Nov. 7, 2007]

**52.227-4 Patent Indemnity—Construction Contracts.**

As prescribed in 27.201-2(d)(1), insert the following clause:

**48 CFR Ch. 1 (10-1-13 Edition)**

**PATENT INDEMNITY—CONSTRUCTION CONTRACTS (DEC 2007)**

Except as otherwise provided, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause)

*Alternate I* (DEC 2007). As prescribed in 27.201-2(d)(2), designate the first paragraph of the basic clause as paragraph (a) and add the following paragraph (b) to the basic clause:

(b) This patent indemnification shall not apply to the following items:

\_\_\_\_\_  
[Contracting Officer list the items to be excluded.]

[72 FR 63065, Nov. 7, 2007]

**52.227-5 Waiver of Indemnity.**

As prescribed in 27.201-2(e), insert the following clause:

**WAIVER OF INDEMNITY (APR 1984)**

Any provision or clause of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the Contractor with respect to such patents:

\_\_\_\_\_  
*Contracting Officer identify the patents by number or by other means if more appropriate*

(End of clause)

[49 FR 12987, Mar. 30, 1984, as amended at 72 FR 63066, Nov. 7, 2007]

**52.227-6 Royalty Information.**

As prescribed in 27.202-5(a)(1), insert the following provision:

**ROYALTY INFORMATION (APR 1984)**

(a) *Cost or charges for royalties.* When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee: